

RULE 32

CHILD SUPPORT GUIDELINES

Preface Relating to Scope

This rule, as amended effective October 4, 1993, shall apply to all new actions filed or proceedings instituted on or after October 4, 1993. Any actions or proceedings instituted before October 4, 1993, shall be governed by Rule 32 as it read before October 4, 1993.

(A) Child Support Guidelines Established

Guidelines for child support are hereby established for use in any action to establish or modify child support, whether temporary or permanent. There shall be a rebuttable presumption, in any judicial or administrative proceeding for the establishment or modification of child support, that the amount of the award which would result from the application of these guidelines is the correct amount of child support to be awarded. A written finding on the record indicating that the application of the guidelines would be unjust or inappropriate shall be sufficient to rebut the presumption if the finding is based upon:

- i. A fair, written agreement between the parties establishing a different amount and stating the reasons therefore; or
- ii. A determination by the court, based upon evidence presented in court and stating the reasons therefore, that application of the guidelines would be manifestly unjust or inequitable.

1. Reasons for deviating from the guidelines

Reasons for deviating from the guidelines may include, but are not limited to, the following:

- a. Shared physical custody or visitation rights providing for periods of physical custody or care of children by the obligor parent substantially in excess of those customarily approved or ordered by the court;
- b. Extraordinary costs of transportation for purposes of visitation borne substantially by one parent;
- c. Expenses of college education incurred prior to a child's reaching the age of majority;
- d. Assets of, or unearned income received by or on behalf of, a child or children; and
- e. Such other facts or circumstances that the court finds contribute to the best interest of the child or children for whom support are being determined.

The existence of one or more of the reasons enumerated in this section does not require the court to deviate from the guidelines, but such reason or reasons may be considered in deciding whether to deviate from the guidelines. The court may deviate from the guidelines even if no reason enumerated in this section exists, if evidence of other reasons justifying deviation is presented.

2. Stipulations

Stipulations presented to the court shall be reviewed by the court before approval. No hearing shall be required; however, the court shall use the guidelines in reviewing the adequacy of child support orders negotiated by the parties and shall review income statements that fully disclose the financial status of the parties. The court, however, may accept from the parties and/or their attorneys of record a Child Support Guidelines Notice of Compliance that indicates compliance with this rule or, in the event the child support guidelines have not been met, the reason for the deviation there from. The form, content, and numbering scheme of the Child Support Guidelines Notice of Compliance shall be prescribed by the administrative director of courts (ADC). (See Form CS-43 following this rule.)

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3. Modifications

The child support guidelines shall be used by the parties as the basis for periodic updates of child support obligations.

- a. The provisions of any judgment respecting child support shall be modified only as to installments accruing after the filing of the petition for modification.
- b. There shall be a rebuttable presumption that child support should be modified when the difference between the existing child support award and the amount determined by application of these guidelines varies more than ten percent (10%), unless the variation is due to the fact that the existing child support award resulted from a rebuttal of the guidelines and there has been no change in the circumstances that resulted in the rebuttal of the guidelines.

4. Health care needs

All orders establishing or modifying child support shall, at a minimum, provide for the children's health care needs through health insurance coverage or other means. Normally, health insurance covering the children should be required if it is available to either parent through his or her employment or pursuant to any other group plan at a reasonable cost.

(B) Definitions

1. Income

For purposes of the guidelines established by this rule, "income" means actual gross income of a parent, if the parent is employed to full capacity, or the actual gross income the parent has the ability to earn if the parent is unemployed or underemployed.

2. Gross income

- a. "Gross income" includes income from any source, and includes, but is not limited to, salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trusts, annuities, capital gains, Social Security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes, and preexisting periodic alimony.
- b. "Gross income" does not include child support received for other children or benefits received from means-tested public assistance programs, including, but not limited to, Aid to Families with Dependent Children, Supplemental Security Income, food stamps, and general assistance.

3. Self-employment income

- a. For income from self-employment, rent, royalties, proprietorship of business, or joint ownership of a partnership or closely held corporation, "gross income" means gross receipts minus ordinary and necessary expenses required to produce such income, as allowed by the Internal Revenue Service, with the exceptions noted in section (B)(3)(b).
- b. "Ordinary and necessary expenses" does not include amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the court to be inappropriate for determining gross income for purposes of calculating child support.

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4. Other income

Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business shall be counted as income if they are significant and reduce personal living expenses.

5. Unemployment; underemployment

If the court finds that either parent is voluntarily unemployed or underemployed, it shall estimate the income that parent would otherwise have and shall impute to that parent that income; the court shall calculate child support based on that parent's imputed income. In determining the amount of income to be imputed to a parent who is unemployed or underemployed, the court should determine the employment potential and probable earning level of that parent, based on that parent's recent work history, education, and occupational qualifications, and on the prevailing job opportunities and earning levels in the community. The court may, in its discretion, take into account the presence of a young or physically or mentally disabled child necessitating the parent's need to stay in the home and therefore the inability to work.

6. Preexisting child support obligation

The amount of child support actually being paid by a parent pursuant to an order for support of other children shall be deducted from that parent's "gross income." If a parent is legally responsible for and is actually providing support for other children, but not pursuant to an order of support, a deduction for an "imputed preexisting child support obligation" may be made from that parent's gross income. The imputed preexisting child support obligation shall be that amount specified in the schedule of basic child support obligations based on that parent's unadjusted gross income and the number of other children for whom that parent is legally responsible. "Other children" means children who are not the subject of the particular child support determination being made. If the proceeding is one to modify an existing award of support, no deduction should be made for other children born or adopted after the initial award of support was entered, except for support paid pursuant to another order of support.

7. Health insurance premiums

The actual cost of a premium to provide health insurance benefits for the children shall be added to the "basic child support obligation" and shall be divided between the parents in proportion to their adjusted gross income in the percentages indicated on the Child Support Guidelines form (Form CS-42).

The amount to be added to the "basic child support obligation" shall be the actual amount of the total insurance premium for family/dependent coverage, regardless of whether all children covered are in the same family.

After the "total child support obligation" is calculated and divided between the parents in proportion to their "monthly adjusted gross income," the amount added pursuant to subsection (b) shall be deducted from the obligor's share of the total child support obligation, provided the obligor actually pays said premium. If the obligee is actually paying the premium, no further adjustment is necessary.

If, at any time while a child support order providing for an insurance adjustment is in effect, such insurance coverage is allowed to lapse, is terminated, or otherwise no longer covers the children for whose benefit the order was issued, the court:

- a. may find the amount deducted from the obligor's child support obligation therefore to be an arrearage in the obligor's total child support obligation;
- b. may find the obligor liable for medical expenses that would otherwise have been covered under the insurance; and/or
- c. enter such other order as it shall deem appropriate.

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8. Child care costs

Child care costs, incurred on behalf of the children because of employment or job search of either parent, shall be added to the "basic child support obligation." Child care costs shall not exceed the amount required to provide care from a licensed source for the children, based on a schedule of guidelines developed by the Department of Human Resources. Before the Department of Human Resources implements any revision to the schedule of child care cost guidelines, it shall provide the ADC a copy of the revised schedule. The ADC shall, as soon as reasonably practicable thereafter, disseminate the revised schedule to all judges, all circuit, district, and juvenile court clerks and registers, and the Family Law Section of the Alabama State Bar. The clerk or register shall maintain the current schedule in his/her office, shall make it available for review, and shall provide copies of it on request, at the customary cost for copies of documents.

9. Split custody

In those situations where each parent has primary physical custody of one or more children, support shall be computed in the following manner:

- a. Compute the support the father would owe to the mother for the children in her custody as if they were the only children of the two parties; then
- b. Compute the support the mother would owe to the father for the children in his custody as if they were the only children of the two parties; then
- c. Subtract the lesser support obligation from the greater. The parent who owes the greater obligation should be ordered to pay the difference in support to the other parent, unless the court determines, pursuant to other provisions of this rule that it should deviate from the guidelines.

(C) Determination of Recommended Child Support Obligation

1. Basic child support obligation

The basic child support obligation shall be determined by using the schedule of basic child support obligations. The category entitled "combined gross income" in the schedule means the combined monthly adjusted gross incomes of both parents. "Adjusted gross income" means gross income less preexisting child support obligations and less preexisting periodic alimony actually paid by a parent to a former spouse. For combined gross income amounts falling between amounts shown in the schedule, the lower value shall be used if the combined gross income falls less than halfway between the amounts shown in the schedule. Where the combined gross income falls halfway or more than halfway between two amounts, the higher value shall be used. The category entitled "number of children due support" in the schedule means children for whom the parents share joint legal responsibility and for whom support is being sought. The court may use its discretion in determining child support in circumstances where combined adjusted gross income is below the lowermost levels or exceeds the uppermost levels of the schedule.

2. Computation of child support

A total child support obligation is determined by adding the basic child support obligation, work-related child care costs, and health insurance costs. The total child support obligation shall be divided between the parents in proportion to their adjusted gross incomes. The obligation of each parent is computed by multiplying the total child support obligation by each parent's percentage share of their combined adjusted gross income. The custodial parent shall be presumed to spend his or her share directly on the child.

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3. Rounding

All dollar amounts used in child support calculations under this rule, including the recommended child support order, may be rounded to the nearest dollar, and all percentages may be rounded to the nearest one percent.

4. Additional awards for child support

In addition to the recommended child support order, the court may make additional awards for extraordinary medical, dental, and educational expenses if (i) the parties have in writing agreed to such awards or (ii) the court, upon reviewing the evidence, determines that such awards are in the best interest of the children and states its reasons for making such additional awards.

(D) Schedule of basic child support obligations

A schedule of basic child support obligations appears as an appendix to this Rule 32.

(E) Standardized child support guidelines form, child support obligation income statement/affidavit form, and child support guidelines notice of compliance form.

A standardized Child Support Guidelines form and a Child Support Obligation Income Statement/Affidavit form shall be filed in each action to establish or modify child support obligations and shall be of record and shall be deemed to be incorporated by reference in the court's child support order. In conformance to Section (A)(2) of this Rule, in stipulated cases the court may accept the filing of a Child Support Guidelines Notice of Compliance form. The form, content, and numbering schemes of the Child Support Guidelines form, the Child Support Obligation Income Statement/Affidavit form, and the Child Support Guidelines Notice of Compliance form shall be prescribed by the ADC.

(F) Income statements

Income statements of the parents shall be verified with documentation of both current and past earnings. Suitable documentation of current earnings includes pay stubs, employer statements, or receipts and expenses if self-employed. Documentation of current earnings shall be supplemented with copies of the most recent tax return to provide verification of earnings over a longer period or shall be supplemented with such other documentation as the court directs. Intentional falsification of information presented on the Child Support Obligation Income Statement/Affidavit form shall be deemed contempt of court. Documentation of earnings used in preparing the Child Support Obligation Income Statement/ Affidavit form shall be maintained by the parties and made available as directed by the court.

(G) Review of child support guidelines

The ADC shall, at least once every four years, review the child support guidelines and the schedule of basic child support obligations, to ensure that their application results in appropriate child support determinations. If the ADC determines that no change is required in the guidelines or in the schedule, the ADC shall so advise the Supreme Court. (Rule 32 adopted September 28, 1987, effective October 1, 1987; amended August 29, 1989, effective October 9, 1989; amended August 24, 1993, effective October 4, 1993)

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Comment

(As amended to conform to amendments effective October 4, 1993)

Rule 32 establishes guidelines as a rebuttable presumption for the ordering of child support awards. These guidelines were adopted in response to requirements set forth in the Child Support Enforcement Amendments of 1984 (P.L. 98-378) and the Family Support Act of 1988 (P.L. 100-485). The guidelines will provide an adequate standard support for children, subject to the ability of their parents to pay, and will make awards more equitable by ensuring more consistent treatment of persons in similar circumstances.

These guidelines are based on the income shares model developed by the National Center for State Courts and are founded on the premise that children should not be penalized as a result of the dissolution of the family unit but should continue to receive the same level of support that would have been available to them had the family unit remained intact. Under the guidelines, attorneys for the plaintiff and defendant will be required to submit a Child Support Guidelines form and Child Support Obligation Income Statement/Affidavit form in each action to establish or modify child support. The Child Support Guidelines form will set forth the combined income available to the family unit, the basic child support obligation as determined from the Schedule of Basic Child Support Obligations (Appendix to Rule 32), and adjustments to the basic obligation for work-related child care expenses and health insurance premiums. A portion of the adjusted total child support obligation is then ascribed to each parent based on his/her percentage share of the combined family income. The Child Support Guidelines form sets forth the recommended child support obligation for the noncustodial parent, which includes an adjustment for the cost of the health insurance premium if such a premium is paid by the noncustodial parent. The guidelines assume that the custodial parent will directly provide his/her proportionate share of support to the children. In addition to the recommended child support obligation, the court may make additional awards for extraordinary medical, dental, and educational expenses if the court finds such awards to be in the children's best interest or if the parents have agreed to such awards.

The Schedule of Basic Child Support Obligations was developed through research sponsored by the National Center for State Courts and is based on extensive economic research on the cost of supporting children at various income levels. This schedule is based on gross income and has been adjusted for Alabama's income distribution relative to the U. S. income distribution. It also incorporates the 1987 federal income tax provisions as well as the withholding schedule for Alabama state income tax.

Other assumptions incorporated in the Schedule of Basic Child Support Obligations include:

1. Tax exemptions

The Schedule of Basic Child Support Obligations assumes that the custodial parent will take the federal and state income tax exemptions for the children in his or her custody;

2. Health care costs

In respect to health care costs, the Schedule of Basic Child Support Obligations assumes unreimbursed medical costs of \$200 per family of four per year. These assumed costs include medical expenses not covered or reimbursed by health insurance or Medicaid or Medicare; and

3. Visitation

The Schedule of Basic Child Support Obligations is premised on the assumption that the noncustodial parent will exercise customary visitation rights, including summer visitation. Any abatement of child support because of extraordinary visitation should be based on visitation in excess of customary visitation.

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The schedule of basic child support obligations includes combined gross incomes ranging from \$550 to \$10,000 a month. Rule 32(C)(1) provides that the court may use its discretion in determining child support where the combined adjusted gross income is below the lowermost levels or above the uppermost levels of the schedule. To further the consistency of awards, a court may wish to issue an order establishing minimum child support obligations for combined adjusted gross incomes of less than \$550. Where the combined adjusted gross income exceeds the uppermost limit of the schedule, the amount of child support should not be extrapolated from the figures given in the schedule, but should be left to the discretion of the court.

Rule 32(B)(8) provides an adjustment for work-related child care costs, provided such costs do not exceed those on the schedule of guidelines for licensed child care costs published by the Alabama Department of Human Resources (DHR). The rule requires that copies of the DHR schedule of guidelines for child care costs be available through the office of the clerk or register of each court where child support actions are filed. Copies of the schedule of guidelines for child care costs should also be available in the county offices of the Department of Human Resources.

The Alabama child support guidelines do not specifically address the problem of establishing a support order in joint legal custody situations. Such a situation may be considered by the court as a reason for deviating from the guidelines in appropriate situations, particularly if physical custody is jointly shared by the parents. Shared physical custody, regardless of "legal custodial arrangements," is an appropriate reason for deviation, Section (A)(1)(a). "Shared physical custody" refers to that situation where the physical placement is shared by the parents in such a manner as to assure the child frequent and continuing contact and time with both parents. Because of the infinite possibilities that exist in terms of time spent with each parent and other considerations associated with such custody, a determination of support is to be made on a case-by-case basis and is left to the sound discretion of the trial court, to be based on findings made at or after trial or upon a fair written agreement of the parties. When a shared physical custody situation results in a support award that deviates from the award that would result from application of the guidelines, the trial court's order, or the written agreement of the parties, must specify and explain the reason for the deviation.

The guidelines also do not address the problem of subsequent children or families. While no deduction may be made for children born or adopted after an initial award of support, unless made pursuant to another order of support or as otherwise provided in this rule, a court may consider evidence of support provided by a party for after-born or adopted children offered in an attempt to rebut the guidelines' presumptions. See *Loggins v. Houk*, 595 So. 2d 488 (Ala. Civ. App. 1991).

The Schedule of Basic Child Support Obligations assumes that a family of four will have approximately \$200 in unreimbursed medical expenses each year. In providing for the payment of deductibles and/or other non-covered medical expenses by the parties, it should be assumed that those expenses are in excess of this amount. Courts and parties may wish to consider whether non-covered medical and/or dental expenses should be allocated in the same percentages as the health insurance premiums are allocated pursuant to this rule and as entered on the Child Support Guidelines form (Form CS-42).

When provisions for payment of a health insurance premium are made as provided in Rule 32, the court, or the parties drafting an agreement, should also consider requiring proof that the children have been enrolled in the health insurance plan and proof of the actual cost of dependent coverage. The court should, in its order of child support, require the parent providing dependent insurance coverage to submit annually proof of continued coverage to the other parent, the court, or the designated child support enforcement agency, and should further require provision of an identification card or other evidence of insurance sufficient for the children to be afforded benefits of such insurance coverage by service providers.

The Supreme Court's Advisory Committee on Child Support Guidelines and Enforcement, which assisted in drafting this rule, has recommended that child support obligations be determined before the court considers spousal support or other obligations.